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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,944	03/26/2004	Edward D. Glas	MS307029.01 / MSFTP637US	9894
27195 7590 08/21/2007 AMIN. TUROCY & CALVIN, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			EXAMINER HUYNH, PHUONG	
			ART UNIT 2857	PAPER NUMBER
			MAIL DATE 08/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,944

Applicant(s)

GLAS ET AL.

Examiner

Phuong Huynh

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on May 15, 2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing at the end of Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. Claims 1-9 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. hereinafter "Chen") (US Patent No. 5,812,780) in view of Bernardin et al. (hereinafter "Bernardin") (US Patent Application Pub. No. 2003/0191795).

Regarding claims 1 and 16, Chen discloses a system that test loads a server [Figs 3A and 3B] comprising:

a dynamic load adjustor component that dynamically adjusts user characteristics, for distribution thereof as a percentage of total requests sent to a server being load tested [see Chen: col. 8, lines 1-67; and col. 9, lines 1-14; also see Figures 4 and 5 and col. 9, lines 15-40 and lines 57-67; col. 10, lines 1-18; col. 12, lines 47-67; col. 13, lines 1-3; col. 14, lines 58-65; and col. 16, lines 19-50].

Chen does not disclose that "[the user characteristics is adjusted **based at least in part on a browser type.**"

Bernardin et al. (hereinafter "Bernardin") (US Patent Application Pub. No. 2003/0191795) teaches "[the user characteristics is adjusted **based at least in part on a browser type**" [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Chen to include the adjustment that is based at least in part on a browser type, as taught by Bernardin, to allow the administrator to monitor and manage the server with increasing secured network, and increased convenience to authorized users from any compatible browser [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

Regarding claim 2, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses a profile characteristic data store [common client profile 38 in col. 8, lines 51-65; and/or simulation file 84 in Fig. 7; col. 10, lines 66-67 and col. 11, lines 1-11; also see abstract, lines 25-27] that supplies the dynamic load adjustor component with weighting for a characteristic defined in a user profile.

Regarding claim 3, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses the dynamic load adjustor component further comprises a weighting designator that randomly assigns to users characteristics based on weightings defined in the user profile [see Chen: Abstract, lines 9-27].

Regarding claim 4, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses the characteristic comprises at least one of: network connections, browser types, and load patterns [see Chen: col. 11, lines 42-46; and col. 14, lines 56-65].

Regarding claim 5, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses the characteristic statistically determined based on web log records [log file 108 in Fig. 7] [also see Chen: Abstract, lines 20-27].

Regarding claim 6, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses the characteristic predetermined in a single user profile [see Chen: col. 3, lines 60-63; and col. 4, lines 1-9 and lines 21-31].

Regarding claim 7, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses a load coordinator component that adjusts an intensity of a load test based on a current distribution of users entering and leaving the server relative to a desired test load [see Chen: col. 14, lines 50-56].

Regarding claim 8, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses artificial intelligence component [see Chen: col. 3, lines 1-20].

Regarding claim 9, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses closed loop control to enable a continual and sustained rate of requests to the server [see col. 12, lines 56-67; and col. 13, lines 1-21].

Regarding claim 17, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses comparing a current load on the server with a desired load [see Chen: Abstract, lines 27-29; col. 7, lines 22-40].

Regarding claim 18, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses creating a new user if the current load falls below a desired load [see Chen: Abstract, lines 27-29; col. 7, lines 22-40; and col. 16, lines 39-49]. Although Chen does not explicitly disclose a comparison between the current load and a desired load, "the weighted average response time

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can then be used as a threshold value to determine the total number of users a server application can adequately support" reads on the claimed "comparing a current load on the server with a desired load."

Regarding claim 19, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses reducing the current load by one upon ending iteration, if the current load rises above the desired load [see Chen: Abstract, lines 27-29; col. 7, lines 22-40; and col.16, lines 39-49].

As mentioned in Chen, in Abstract, lines 27-29; col. 7, lines 22-40; and col.16, lines 39-49, that the weighted average response time can then be used as a threshold value to determine the total number of users a server application can adequately support.

Chen et al. further discloses that "network administrator may make graphs of the weighted average response time of different client loads for an Exchange server to aid in determining when another Exchange server should be added to the network."

Although Chen et al. does not explicitly disclose that when the current load falls below a desired load, a new user is created, and only disclose a new Exchange server is added to the network as mentioned iteration above, the description above reads on the claimed "creating new user when current load falls below a desired load."

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Regarding claim 20, Chen and Bernadin disclose everything as applied above (see claim 1). In addition, Chen discloses controlling a rate of loading via a feedback loop control [see Chen: in col. 13, lines 3-21].

As mentioned in Chen et al., in col. 13, lines 3-21, that "another safety mechanism to prevent message explosion caused by positive feedback loop is implemented called automatic message generation damping. A LoadSim client will track how many times a given message has been forwarded or replied and diminish, by a damping factor... for each successive iteration with the damping factor having increasing impact until eventually extinguishing any possibility of reply or forward." Therefore, the automatic message generation damping reads on the claimed "feedback loop control."

2. Claims 10-15, and 21 are rejected under 35 U.S.C. 103(a) as being anticipated by Malmskog (US Patent No. 6,721,686) in view of Bernardin et al. (hereinafter "Bernardin") (US Patent Application Pub. No. 2003/0191795).

Regarding claim 10, Malmskog discloses a system that stress a server, comprising: an execution engine [testing tool application 22] that generates a scenario that loads the server via a plurality of users, the plurality of users is dynamically adjusted based on predetermined weightings of a user profile having weighted characteristics, wherein the scenario distributes user characteristics as a percentage of total requests [see Malmskog et al.: col. 3, lines 56-67, col. 4, lines 1-17 and lines 48-67; col. 5, lines 1-18; col. 6, lines 1-48, and 58-67 ; and col. 7, lines 7-16; also see Figures 5-7].

Malmskog does not disclose that "weighted characteristics that comprises at least a browser type".

Bernardin (US Patent Application Pub. No. 2003/0191795) teaches that "weighted characteristics comprises at least a browser type" [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Malmskog to include the adjustment that is based at least in part on a browser type, as taught by Bernardin, to allow the administrator to monitor and manage the server with increasing secured network, and increased convenience to authorized users from any compatible browser [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

Regarding claim 11, Malmskog and Bernadin disclose everything as applied above (see claim 10). In addition, Malmskog discloses the scenario comprises at least of a test mix and a load profile [see Malmskog et al.: col. 6, lines 61-67].

Regarding claim 12, Malmskog and Bernadin disclose everything as applied above (see claim 10). In addition, Malmskog discloses a control input that adjusts rate of requests loaded onto the server [operating system 24 along with K-Queue and filter] [see Malmskog et al.: col. 4, lines 31-47, and col. 3, lines 37-43].

Regarding claim 13, Malmskog and Bernadin disclose everything as applied above (see claim 10). In addition, Malmskog discloses a queuing mechanism [K-Queue] that retrieves and sorts requests to be sent to the server [see Malmskog et al.: col. 3, lines 7-43].

Regarding claim 14, Malmskog and Bernadin disclose everything as applied above (see claim 10). In addition, Malmskog discloses a scheduler [traffic shaper 24b and delay parameter 44] that determines number of requests to be generated for an upcoming period [see Malmskog et al.: col. 5, lines 31-39].

Regarding claim 15, Malmskog and Bernadin disclose everything as applied above (see claim 10). In addition, Malmskog discloses the requests sorted according to time function for execution [TCP/IP routines] [see Malmskog et al.: Figure 5].

Regarding claim 21, Malmskog discloses the system for test loading a server comprising:

means for dynamically adjusting user characteristics while loading the server [network device 20] [see Malmskog et al.: col. 2, lines 55-65 and col. 3, lines 1-6]; and

means for distributing the user characteristics as a percentage of total requests sent to the server [scenario configuration interface] [see Malmskog et al.: Figure 7].

Malmskog does not disclose that “weighted characteristics that comprises at least a browser type”.

Bernardin teaches that “each user characteristic including at least a browser type” [see Bernadin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

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It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of Malmkog, to include the adjustment that is based at least in part on a browser type, as taught by Bernardin, to allow the administrator to monitor and manage the server with increasing secured network, and increased convenience to authorized users from any compatible browser [see Bernardin: Paragraphs [0077], [0287], [0326], [0352], and [0361]].

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh whose telephone number is 571-272-2718. The examiner can normally be reached on M-F: 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on 571-272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuong Huynh
Examiner
Art Unit 2857

PH August 16, 2007


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SUPERVISORY PATENT EXAMINER